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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 613

ANNETTE STAYT HALL, ET AL.,
Petitioners,

vs.

VIRGINIA PENFIELD SCARLETT, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Opinions Below

The District Court filed opinion, reported in 81 F. Supp. 922, (R. 15A).

The Court of Appeals filed its first opinion on February 13, 1950 reported in 86 U. S. App. D. C. 165, 181 F. (2d) 277, (R. 26), and its second opinion on February 20, 1951, not yet reported (R. 59).

The judgment of the Court of Appeals was entered February 13, 1950 (R. 28); on April 20, 1950 the Court denied timely petition for rehearing of petitioners (R. 44), and afterwards, on June 23, 1950 received from petitioners the second petition for rehearing, (R. 46) and thereafter denied same by filing the supplemental second opinion as stated above (R. 60).

Jurisdiction

Jurisdiction is claimed under Title 28, United States Code (revised), Section 1254-1 (June 25, 1948, c. 646, 62 St. 928).

Constitution of the United States and Statutes Involved

As exhibited in the Supplementary Appendix, the above are as follows:

United States Constitution Art. IV, Sec. 1; U. S. Rev. St. 905, 28 USC, 1940 Sec. 687.

Adoption Act of State of Arizona. IV Nevada Compiled Laws 1929; Section 9480; February 20, 1885.

Adoption Act (1901) of District of Columbia, 28 Stat. 687 Ch. 134; 31 Stat. 1252 Ch. 854 sec. 395. D. C. Code 1929—Title 15-1.

Adoption Act (1937) as amended, of District of Columbia. D. C. Code 1940 and appendix 1949, Title 16-201-207.; 50 St. 806 ch. 774 Sec. 1-7 53 St. 844, ch. 226 54 St. 235 ch. 244, 60 St. 314, ch. 499.

Both District Acts appear as they do in 1940 D. C. Code and 1949 appendix, with the repeal of the 1901 Act by the 1937 Act, Section 207, stated in note to that section which sets forth the 1901 Act.

The parts of the 1937 Act material herein to the entry and effects of a final decree of adoption are as follows:

Section 16-205:

> "Entry of a final decree of adoption shall establish the relation of natural parent and natural child between adoptor and adoptee for all purposes including mutual rights of inheritance and succession • • • All rights and duties including those of inheritance and succession between adoptee, his or her natural

parents, their issue, collateral relatives, and so forth, shall be cut off. * * *"

Section 16-204:

"Notice of a final decree of adoption shall be sent to the Bureau of Vital Statistics of the Health Department. This Bureau shall cause to be made a new record of the birth in the new name and with the names of the adoptors and shall then cause to be sealed and filed the original birth certificate with the order of the court and such sealed package shall be opened only by order of court. *If the adoption occurred outside of the District of Columbia, upon filing with the Bureau of Vital Statistics of the Health Department a certified copy of the final decree of adoption, the Bureau shall cause to be made a new record of the birth in the new name with the names of the adopters, and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption; and such sealed package shall be opened only by order of the court of competent jurisdiction.* If the birth occurred outside of the District of Columbia, the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption. (1946 amendment italicized.)

Section 16-207:

"The provisions of section 16-201 to 16-207 shall have no retroactive effect and shall not be construed as affecting in any way the rights and relations obtained by any decree of adoption entered prior to August 25, 1937, and all proceedings instituted and pending on August 25, 1937, shall be carried to their final determination in accordance with the provisions of section 395 of the Act of March, 1901, 31 Stat. 1252, ch. 854, as if sections 16-201 to 16-207 had not been enacted, and all orders and decrees entered therein shall remain valid and binding on all parties thereby affected."

Questions Presented

I

Is the decision below—that the 1937 District of Columbia Adoption Act, as amended, does not affect the status or rights of the respondent Scarlett as claimant to an intestate estate which arose on May 2, 1947, as subject to the District of Columbia law of inheritance and succession then in effect—denial of mandatory operations of law, to wit:

(a) The constitutional and statutory mandates for full faith and credit, as against direct attack, to a final statutory decree of adoption entered in 1922 in the State of Nevada, to establish, on May 2, 1947, in the District of Columbia, the Scarlett relation or status in adoption, which the respondent Scarlett admits was established by the decree for her adoption entered, and, thereafter, always in full effect, in the State of Nevada.

(b) The comprehensive legislative mandate of the 1937 District of Columbia Adoption Act as amended, providing the entry of a final decree of adoption shall establish a legal personal relation or status of adoption in the District, and the rights and relations of the adoptee and interested parties, including rights of inheritance and succession, subject to express limitations provided in the Act.

II

The material conflicts presented by the decision, to wit:

(a) Its new rule of property of wide effect and in conflict with established rule of property in the District.

(b) Its conflict with the new concept of adoption enacted in the 1937 Act as amended.

(c) Its conflict with settled principles of statutory construction, and particularly as the decision considers, only a part, and not the entire 1937 District Adoption Act as amended.

Statement of Case

Upon the death, intestate, on May 2, 1947, of Blanche M. Penfield, a District resident, her estate consisting entirely of personalty, became subject to the right of succession of persons having the legal status provided in the law of the District of Columbia then in effect.[1]

The District Court appointed an administrator for the estate upon *ex parte* petition of respondent Scarlett, (R. 4A) in acceptance of its allegations that Scarlett was the surviving niece, sole heir at law and next of kin of the decedent. Her petition did not disclose the Scarlett legal relation or status of adoption as the child of a stranger, previously established and thereafter in effect by the entry of a final decree of adoption in the State of Nevada, as subsequently admitted by respondent Scarlett.[2]

Before distribution of the estate, petitioners, Hall, et al., claimed succession in natural right superior to natural right of Scarlett, as cousins in the first degree and next of kin of the decedent. Their petition (R. 4A) alleged Scarlett was, on May 2, 1947, in Nevada and also in the District, in the legal relation or status of adoption as the child of a stranger, duly established in Nevada by the entry of a final statutory decree of adoption, and established in the District by constitutional and statutory full faith and credit to the final decree of adoption of Scarlett (R. 7A, 10A) entered in

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[1] D. C. Code Title 18-103:

No right in the inheritance shall accrue to or vest in any person other than the children of the intestate and their descendants, unless such person is in being and capable in law to take as heir at time of the intestate's death; * * *

[2] Note 9, infra, p. 11.

Nevada before May 2, 1947, and thereafter in full effect, as evidenced by and in the Nevada judicial record of the adoption proceedings, of which their petition made due profert. Their petition also alleged the provision of the District law of inheritance and succession in effect on May 2, 1947, providing that all natural right as between an adoptee and his or her parents, their issue, collateral relatives and so forth, shall be cut off, precisely cut off all natural right of respondent Scarlett, then in the statutory relation or status of adoption, to said intestate estate arising on May 2, 1947.[3]

The District Court heard the conflicting petitions upon motions for summary judgment of each party, (R. 12, 13A), as involving no controversial fact, and only the effect of the 1937 District Adoption Act, as amended, in reference to petitioner contention that Section 16-205 cut off the Scarlett natural right and of the opposing Scarlett contention that Section 16-207 saved her natural right from cut off, upon the Scarlett relation or status in adoption, established in Nevada, and also admittedly established in the District, on May 2, 1947, by full faith and credit to the Nevada decree.[4]

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[3] Section 16-205, 1937 District Adoption Act, supra, p. 2.

In supplement and emphasis of their claim, petitioners moved for judicial notice that other designated proceedings evidenced that Walter S. Penfield, her father, cut off Scarlett from interest in his estate in his probated last will excepting a bequest to her as the adopted child of her grandmother, and again cut off Scarlett from all interest in the present estate by testamentary bequest of same to petitioners and other cousins then in being. (R. 14A.)

[4] U. S. Const. Art. IV, 1; U. S. Rev. St. 905, 28 U.S.C.A., 687; *McElmoyle* v. *Cohen*, 13 Pet. 312, 10 L. Ed. 177:

"If a judgment is conclusive in the state where it is pronounced, it is equally conclusive, everywhere, in the States of the Union. If reexaminable there, it is open to the same inquiries in every other state." (Story's Comm. 183)

"It is, therefore, put upon the footing of a domestic judgment, by which is meant not having the operation and force of a domestic judgment

The District Court entered judgment for Scarlett, pursuant to conclusions stated in its opinion.[5]

Upon the appeal, the appellate court, by two opinions, (R. 26, 59) also decided the case for Scarlett, in a new aspect of the 1937 Act not presented by any party, and not an issue in the District Court.

The first opinion construes the phrase, "Entry of a final decree of adoption shall establish to relation" in the first sentence of Section 16-205, regardless of other limitations provided in Section 16-207, to be precise limitation of the Act and its effects only to the case wherein the entry of a final decree under the 1937 Act, and hence after its enactment, shall establish the relation or status of adoption in

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beyond the jurisdiction declaring it to be a judgment, but a domestic judgment as to the merits of the claim, or subject matter of the suit."

Morris v. *Jones*, 329 U. S. 545, 91 L. Ed. 656:

"But full faith and credit is a more inexorable demand; its applicability does not turn on a balance of convenience between litigants."

[5] It is not questioned that, in the absence of statutory provision, the right of a child to inherit from a parent, or such parent's collateral relatives, remains intact, even though such child be adopted by another. Obviously, the present law in the District of Columbia cuts off that right, but it seems evident that it was the intention of the Congress to make that provision applicable only to those who were adopted subsequent to the enactment of that legislation. While the non-retroactive provisions in Section 16-207 deal explicitly with adoption proceedings in the District of Columbia, they so clearly evidence the policy that other provisions of the Act, including those cutting off the rights of adoptee to inherit from natural parents and their collateral relatives, should not be construed as having application contrary to such policy. Unquestionably the lawmaking authority could have made a distinction, in so far as inheritance and distribution is concerned, between persons adopted pursuant to the Act of 1901 in the District of Columbia and those adopted pursuant to law in other jurisdictions, but I can find no basis in the legislation for assuming that such was the intention.

In this view, I must conclude that, although the petitioner, Virginia Penfield Scarlett, is an adopted child of her maternal grandmother, and such was her status at the time of the death of the decedent, the decree of her adoption being prior to August 25, 1937, the provisions of Section 16-205 do not operate to cut off her right of distribution from the estate of the decedent, and, therefore, she is the person entitled to the sole distribution of the personal property in said estate.

the District, and thereupon concludes—"*the 1937 Act did not affect the status or right of appellee Scarlett.*" The decision is denial that the first effect of the Act in providing for statutory adoption in the District is that thereupon the entry of a final decree of adoption establishing a status in adoption under the laws of Nevada shall, by the Constitutional rule of full faith and credit, establish the status of adoption in the District. The denial of the rule of faith and credit is absolute in decision that only the entry of a decree under the 1937 Act shall establish the relation or status of adoption in the District of Columbia.

The second opinion does not modify the first decision as to the instant case of entry of decree outside the District before enactment of the 1937 Act and the case of District decrees entered before enactment of the Act; it modifies its first decision as to the case of entry of a decree outside the District after enactment of the Act by holding the effect of such entry will be judicially determined when the case arises, and supplements the first decision as to the additional case of an outside decree as arising under the 1946 amendment of Section 16-204.[6]

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[6] *Appellate opinions:*

The first opinion: (In full, R. 26).

• • • The question is whether Mrs. Scarlett's right to inherit from her natural aunt, through her relationship to her natural father, was cut off by the 1937 Act. The pertinent provisions of that statute are now Sections 16-205 and 16-207 of the Code of the District of Columbia • • •

• • • • • • •

Much of the argument here relates to the meaning of Section 16-207 of the Code (the latter of the above two sections), which contains the provisions saving the new act from retroactive effect. But we do not reach that section, being of opinion that we need go no further than Section 16-205. The cut-off there provided is clearly a consequence of a decree to be entered under the new act. The section begins, "Entry of a final decree of adoption shall establish the relation of natural parent and natural child. . . ." Then, in the next sentence, it provides, "All rights . . . between adoptee, his or her natural parents, . . . and so forth, shall be cut off". This means cut off by the entry of a final decree, described

The new basis of decision of the present case,—apparent in the appellate opinions, that the 1937 Act, as amended is exclusive of application and effect to the establishment of the relation or status of adoption, finally, in case of entry of a final decree of adoption outside the District before its enactment, and, conditionally, in case of such entry after its enactment,—evidences that the appellate court has raised and decided, of its own motion, the new issue, not previously in the case, of the application to the Nevada decree of adoption of the operations of law mandated by the constitutional and statutory rule for full faith and credit in the District to the Nevada decree, and mandated by the 1937 District Adoption Act as amended, and, that its decision is denial of full faith and credit in the District to the Nevada decree as mandated by the Constitution and laws of the United States, and by the 1937 District Act as amended.[7]

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in the first sentence. And this provision is by its very terms prospective. The whole concept of adoption was altered by the new act, and its provisions relate to the effects of decrees entered under it. It is our view, therefore, that the Adoption Act of 1937 did not affect the status or rights of appellee Scarlett. This was the conclusion of the District Court, and its judgment is, therefore, Affirmed.

The second opinion: (In full, R. 59).

• • • Section 16-205 of the District of Columbia Code refers to the entry of a final decree under or in view of the Act and hence after the date of enactment of the Act. In so saying we say two things: (1) that "entry of a final decree" means entry of a decree either within or without the District of Columbia, but we do not attempt to define the extent of the effect of a foreign decree because we do not have that problem in this case; and (2) that we do not think that the filing of a foreign decree with the Bureau of Vital Statistics and the consequent issuance of a new birth certificate, under Section 16-204 as amended, is the "entry of a final decree of adoption" within the meaning of Section 16-205. • • •

[7] This is not the case where, after full faith and credit to a foreign decree, same is held without effect as to the descent of property in the local jurisdiction, in *Hood* v. *McGehee,* 237 U. S. 611, 59 L. Ed. 1144, and *Olmsted* v. *Olmsted,* 216 U. S. 386, 54 L. Ed. 530.

The first petition for rehearing by petitioners was denied; it invited reconsideration of the case in the aspect of the effect of the 1946 amendment to Section 16-204 which previously was accidentally omitted in presentation of the 1937 Act.[8]

The appellate court subsequently received the second petition for rehearing, which invited reconsideration in the aspect of the failure to give effect to mandatory operations of law, and filed its second opinion in denial of same. (R. 60.)

Thereupon, issue of the appellate mandate was stayed to permit the filing of petition for grant of certiorari.

Reasons for Granting the Writ

I

The operation of the mandatory constitutional and statutory operations of law necessary to the construction and application of the 1937 District Adoption Act, materially rejected in the opinions and decision below, has not been, but should be settled by this Court.

This is a case of first instance of record in the District of Columbia as to the status and property rights of an adoptee under the 1937 District of Columbia Adoption Act as amended.

The mandatory operations of law presented as collectively applicable to the adoption aspects herein, are (a) an

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[8] Birth Certificate: Incident to the first petition for rehearing, the appellate court denied petitioner tender and motion for leave to file, as a supplement to the record, a certified copy of the Scarlett birth certificate of record in the District of Columbia, instead of which, the 1937 Act as amended provided for the making of a new birth certificate in the case of the adoption either within or outside the District, of a person born in the District, and for final sealing of the original birth certificate and final decree of adoption. (R. 42, 44.)

admitted Scarlett legal status of adoption,[9] (b) the constitutional and statutory full faith and credit to the Nevada decree, as not subject to direct attack, to establish in the District the status of adoption, thereby established in Nevada, and (c) the comprehensive 1937 Adoption Act, legalizing statutory adoption in the District, and providing the rights of inheritance and succession of a person in an established status of adoption and of other parties in interest.

The personal status of adoption validly created under its laws in a jurisdiction is recognized in other jurisdictions in which the laws provide for the status of adoption, and is therein entitled to full faith and credit as against direct attack but is without any additional effect as to the descent of property in the subsequent jurisdiction.[10]

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[9] *Gullett* v. *Gullett,* 80 U. S. App. D. C. 73, 149 F. (2d) 17:

When the judgment of a state is properly authenticated and stands unchallenged, as in the present case, a denial to it of full faith and credit constitutes a violation of the Constitution.

[10] *Hood* v. *McGehee,* 189 F. 205, Affd. 199 F. 989, Affd. 237 U. S. 611:

• • • "Conceding that the Louisiana adoption proceedings come within the meaning of public acts, records or judicial proceedings, and are entitled to full faith in the sense of compelling recognition by other states of the adoptive filial relation created by them, it does not follow that the right of inheritance to real property follows such status, when recognized.

Each state has exclusive jurisdiction of the regulation of the transfer and descent of real estate within its limits. It would be competent for the legislature of Alabama to deny the right to inherit property to children adopted in its own courts by its own procedure. It would be competent for it to confer such rights on children of its own adoption and deny it to those of the adoption of foreign states."

Hood v. *McGehee,* 237 U. S. 611:

"There is no failure to give full credit to the adoption of plaintiffs in a provision denying them the right to inherit land in another state • • •."

Irving Trust Co. v. *Day,* 314 U. S. 556, 562, 86 L. Ed. 452, 457:

"Expectations or hopes of succession, whether testate or intestate, to the property of a living person, do not vest until the death of that person."

Jefferson v. *Fink,* 247 U. S. 288, 62 L. Ed. 1117:

"No one has a vested right in the law of descent or inheritance. Upon the death of a citizen, title to his property passes under the law of descent

Given herein that the Adoption Acts of Nevada and of the District [11] each authorize a status of adoption to be established by a final judicial decree, in their respective jurisdictions, and that the decree entered in either jurisdiction, by full faith and credit, shall establish in the other jurisdiction the original legal status of adoption, with the same effect as the entry of a decree entered in such other jurisdiction, plainly the present decision denies full faith and credit to the Nevada decree by holding that Section 16-205 limits entry of a final decree, which shall establish

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in force at the date of death, and the heirs named by the law in force at the date of death acquire a vested right in the property, but, prior to death, no one has a vested right in the law of descent or inheritance."

Maguin v. *Illinois T. & S. Bank*, 170 U. S. 283:

"The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege and therefore the authority which confers it may impose conditions upon it."

Clark v. *Allen*, 331 U. S. 503, 517:

"Rights of succession to property are determined by local law."

Cooley Const. Lim., 7th Ed. 512:

"Not until the ancestor dies is there any vested right in the heir."

Am. Law Institute Restatement of the Law of Conflict of Laws:

Sec. 143—The status of adoption, created by the law of the state having jurisdiction to create it will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law.

Illustration—Under a statute of State X, domicile of both parties, A adopted C; and the law of X provides that an adopted child shall be the heir of the adoptive parent. A dies leaving land in the State of Y, which has no law providing for adoption. C does not inherit the land."

[11] Reference to District legislation as being the same as State legislation rests upon the following:

American Security & T. Co. v. *Rudolph*, 38 App. D. C. 32, 43, Affd. 224 U. S. 491:

"By virtue of the cession of the District of Columbia, Congress became invested with special legislative powers therein to the full extent possessed by the state of Maryland before the cession occurred. These powers, as exercised in the Code of Laws for the District and in legislation of the character involved here are local in their nature and purpose, and expressly limited to the boundaries of the District. They are not laws of the United States, having operation throughout the Union, but special enactments for the regulation of persons and property in the District of Columbia exclusively. They are local, and not general."

the status of adoption in the District, only to a decree entered in the District under the 1937 Act, and by holding the 1937 District Act does not affect the status or rights of Scarlett. The decision is of greater interest because, it expressly holds the newly discovered limitation in Section 16-205 of the effect of the 1937 Act excludes the stated limitations in Section 16-207 from all consideration.[12]

In such new and serious situation, petitioners confidently appeal to the discretion always exercised by this Court as the supreme arbiter of the application of the constitutional and statutory rule of full faith and credit as requiring reconsideration of the decision below.[13]

II

The conflicts presented by the decisions below.

The present decision, limiting the application and effect of the 1937 Act only to the relation or status of adoption established by final decrees entered under its provisions, results in material immediate conflicts.

(a) *Conflict, as a rule of property of wide effect, with settled District precedents.*

In neither the 1937 Adoption Act, until the amendment of

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[12] Section 16-207 as precise limitation of the 1937 Act would have been omitted if the constructive limitation now found in Section 16-205 was so enacted.

Here it is also apparent the first appellate decision, disclosing that, before 1937, the adoption did not affect the Scarlett right to inherit, and that the 1937 cut off is prospective in effect, effectually removes Scarlett from the provisos of 16-207 that the Act shall neither be retroactive nor construed to affect any right or relation obtained by a decree of adoption entered prior to its enactment.

[13] U. S. Const. Art. IV, Sec. 1—Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. U. S. Rev. St. 905, 28 U.S.C.A. 1738 (new)—The effect of the constitutional provision and enabling act is recently stated in *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 88 L. Ed. 161:

> "From the beginning this Court has held that these provisions have made that which has been adjudicated in one state res adjudicata

Section 16-204 in 1946, nor the prior 1901 District Act, is there any reference to decrees of adoption entered outside the District.[14]

The decision conflicts with the implicit mandate of the Constitutional rule of full faith and credit mandating that a final decree of adoption, establishing the relation or status of adoption, either under the laws of Nevada or of the District, reciprocally, shall establish the status of adoption in Nevada, or the District, with the same effect as established where originally entered. In the District, this mandate is upheld by decision that the right of the foreign adoptee in the District as the heir of his adoptor, is established in the District by full faith and credit to the foreign decree of adoption entered in Pennsylvania, notwithstanding that the entry in Pennsylvania was before enactment of the 1901 District Act, and notwithstanding that full faith and credit to the Pennsylvania decree, to establish the adoptee as heir of the adoptor, in the District, arose at the death intestate of the adoptor, after enactment of the 1901 Act.[15]

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to the same extent in every other (citations here omitted). Even though we assume for present purposes that the command of the constitution and the statute is not all embracing, and that there may be exceptional cases in which the judgment of one state may not override the laws and policy of another, *this court is the final arbiter of the extent of the exceptions* (citations here omitted). And we point out in Williams v. North Carolina supra (citations omitted) that the 'actual exceptions have been few and far between'." (Parentheses and italics here inserted.)

[14] See Statutory Appendix.

[15] *Rockwell* v. *Tracy* (D. C., S. C.) Stafford, J., 39 Wash. L. R. 475. The present case is shortly that the Nevada decree entered before enactment of the 1937 Act and is established thereafter under the 1937 Act, which places it on all fours with the *Rockwell* case.

Stafford, J.: "• • • Undoubtedly it is the general result of the decisions in this country that statutes and decrees like those in question here should be recognized and enforced in other States, and we have no disposition to adopt a different view."

There is further conflict regarding all rights and relations that are the effects of a status of adoption. The present decision that Scarlett has no status in adoption in the District and is in her natural status is denial that Scarlett in the District is legally either child or expectant heir of her adoptrix, whereby no right or relation that is the effect of a status of adoption exists between Scarlett and her adoptrix. The multiple conflicts under such consequences are fully apparent.

(b) *Conflict with the new concept of adoption, heretofore judicially approved below, as enacted in the 1937 Adoption Act as amended.*

Although the legislative motive in enacting a statute is not material it is always of interest.

Writing in 1940, (Vinson, A. J.) the Court unanimously stated:[16]

> "When the adoption of a child is sought, a decision ordering or denying same affects the lives of the child, his natural parents, and his prospective adoptive parents. Rights of custody, control and inheritance are affected. To say that a decision ordering or denying an adoption is fraught with deep and serious social significance is but to state the obvious.
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> • • • • • • •
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> "In 1937, following the lead of certain state legislatures, Congress enacted the present Adoption Act which has for its purpose the improvement of adoption proceedings in the District of Columbia."

Again in 1944, (Miller, A. J.) the Court unanimously stated:[17]

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[16] *Barnes* v. *Paanakker*, 72 App. D. C. 39, 111 F. (2d) 193, 195.

[17] *Re Adoption of minor*, 79 U. S. App. D. C. 191, 144 F. (2) 644. The first quotation is annotated with the following references: "See *Pound, the Spirit of the Common Law*, (1921) 189: 'Finally,

"The provisions of the new law * * * reflect * * * a different public attitude toward adoption and require interpretation on a more thorough basis than by reference to decisions of other jurisdictions having statutes similar to that which formerly prevailed in the District.

* * * * * * *

"In enacting the new law, Congress was not acting blindly or arbitrarily, but instead upon the advice of trained persons who have studied these problems of child life and family welfare."

(c) *The conflict by disregard of principles of statutory construction.*

The District Court considered the Scarlett status of adoption in full effect in the District on May 2, 1947,[18] which the

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recent legislation and judicial decision have changed the old attitude of the law with respect to dependent members of the household. Courts no longer make the natural rights of parents with respect to children the chief basis of their decisions. The individual interests of parents which used to be the one thing regarded has come to be almost the last thing regarded as compared with the interest of the child and the interest of society. In other words, here also social interests are now chiefly regarded.'"

The second quotation is annotated with reference to H.R.R. 1274, 75 Cong. 1 Sess. and to D. C. Commissioner transmittal letter containing the following statements:

* * * This bill has the endorsement of the following listed organizations (16 in number here omitted).

A special committee of the Bar Association of the District of Columbia has considered and studied this bill and is unanimously in accord with the principles of the same, * * *. The Commissioners of the District of Columbia endorse this proposed legislation and are of opinion that its passage is desirable.

[18] I must conclude that, although the petitioner, Virginia Penfield Scarlett is an adopted child of her maternal grandmother, and such was her status at the time of the death of the decedent—Addressing their claim only to Scarlett, an outside adoptee in the same class with District adoptees, considering all as adopted prior to enactment of the 1937 Act, petitioners needed only except to its implied cut off of natural right of

appellate decisions reject as not to be established, and thereupon whether the limitations provided in Section 16-207 saved the Scarlett natural right from the cut off provided in 16-205 to be the effect of the status of adoption. The District Court found that Section 16-207 expressly only excepts and distinguishes, as exempt from the cut off, the status of adoption established by decrees entered under the 1901 District Act before enactment of the 1937 Act, but although it was possible to do so, does not except or distinguish as exempt from the cut off, the status of adoption established by the original entry of foreign decrees before enactment of the 1937 Act. Its decision is that the implication and policy of the Act save persons in the latter status of adoption from the cut off, although the cut off applies to persons in the status of adoption established by both District or foreign decrees that shall be entered after enactment of the 1937 Act.

In excepting from the cut off persons in a status of adoption by constructive policy or implication of the Act, while admitting the Act excepts only one class of such persons and not the other class of such persons, although such further exception was possible, the District Court goes beyond its letter to state its conclusion as to the spirit of the statute. In the stated case, this decision disregards both the maxim, "A thing expressed puts an end to implication",[19] and the consequent principle of statutory construction that specific

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Scarlett as an outside adoptee held to have been possible of exclusion in the Act, and not to except to the actual cut off of District adoptees held explicitly included in the Act of Section 16-207. As the appellate court admits that the cut off is entirely prospective, and hence not retroactive, and that the natural right of District adoptees remained unaffected after adoption, and hence not obtained by any decree, evidently District adoptees are not excepted from cut off by Section 16-207, whereupon the exemption from cut off of the entire class is obtained by construction of Section 16-205.

[19] *Expressium facit cessari tacitum.*

exception to the effect of a statute affirms application of the statute in any and all effects not so excepted.[20]

Other elemental principles of statutory interpretation and construction are not given due effect by the appellate decisions.

A statute plain and not ambiguous in its terms and provisions is not subject to construction.[21] The appellate opinions find the act plain and specific instead of ambiguous. Their reliance on Section 16-205 only imports that the 1937 Act is not comprehensive of existing operations of law imposed to obtain its provided effect.[22]

Judicial construction must give effect to the whole statute and all its provisions,[23] which is not applied in the conclusion below that the effects of the 1937 Act, as to foreign adoptees, are limited by Section 16-205 as specifically exclusive of the limitations in Section 16-207 and of all other provisions of the Act.

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[20] *Arnold Constable & Co.* v. *United States*, 147 U. S. 404, 37 L. Ed. 258:

"In Brown v. Maryland, 25 U. S. 12 Wheat. 419, 438, Chief Justice Marshall recognized 'as a rule of interpretation, to which all assent, that the exception of a particular thing from general words proves, that, in the opinion of the law-giver, the thing excepted would be within the general clause had the exception not been made.'"

[21] *Adams Express Co.* v. *Kentucky*, 238 U. S. 190, 59 L. Ed. 1267:

"It is elementary that the first resort, with a view to ascertaining the meaning of a statute, is to the language used. If that is plain, there is an end to construction, and the statute is to be taken for what it says."

[22] That the 1937 Act is mandatory is evidenced by the use of "shall" 52 times in the Act and of "may" only 4 times and of "will" only 1 time.

[23] *Kohlsaat* v. *Murphy*, 96 U. S. 153, 24 L. Ed. 844:

"In the exposition of statutes, the established rule is that the intention of the law-maker is to be deduced from a view of the whole statute and every material part of same—

* * * the controlling rule of decision in applying the statute in any particular case is, that, whenever the intention of the Legislature can be discovered from the words employed, in view of the subject matter and surrounding circumstances, it ought to prevail, unless it leads to absurd and irrational conclusions, which should never be imputed to the legislature, except when the language employed will admit of no other signification."

Corollary principles are those above stated in reference to the opinion of the District Court and, further, that the legislative motive in enacting the statute, or any hardships are not material.[24]

Story, J., long ago, summarized all these principles as follows:[25]

> "Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature."

Petitioners submit the apparent and continued conflicts resulting from the decision below are reasons for its full consideration.

Conclusion

The issue petitioner raises is important in its two aspects, yet so simple and clear cut that this Court can resolve it without extended argument, or indeed, any argument. Certiorari should be granted with further directive of the case by this Court.

Respectfully submitted,

CAMDEN R. MCATEE,
Attorney for Petitioner.

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[24] *United States* v. *First N. Bank*, 234 U. S. 245, 260, 58 L. Ed. 1298:

"If the true construction has been followed by harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of legislature rests with the Congress, and it is the province of the court to enforce, not to make, the laws." (Citations here omitted.)

[25] *Wilkinson* v. *Leland*, 2 Pet. 627, 662, 7 L. Ed. 542.

SUPPLEMENTARY APPENDIX

Constitution and Statute of United States:

Constitution Article IV-1—Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Act of May 26, 1790, ch. 11, 1 St. L. 122; Act of March 27, 1804, 2 St. L. 299. (R.S. 905):—* * * And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken.

Adoption Act of Nevada:

IV Nevada Compiled Laws, 1929—Section 9480, February 20, 1885:—A child, when adopted may take the family name of the person or persons adopting, and after adoption the persons adopting and the child shall sustain toward each other the legal relation of parent and child, and have all rights, including the rights of support, maintenance, protection and inheritance, and be subject to all the duties of that relation; and the natural parents of an adopted child are, from the time of the adoption, relieved of all parental duties toward, and all responsibilities for, the child so adopted, and have no rights over it.

Adoption Acts of District of Columbia:

1901 Act: 28 St. 687, ch. 134; 31 St. 1252, ch. 854, sec. 395.—As this appears in Statutory Appendix in the certified record it is not repeated.

1937 Act as amended; District Code 1940 and 1949 app., Title 16 Sec. 201-207; 50 St. 806, ch. 774; 53 St. 844, ch. 226; 54 St. 235, ch. 244; 60 St. 314, ch. 499.

The 1937 District Adoption Act as amended, excepting its provision in repeal of the 1901 Act, as

recited in the annexed note to its Section 16-207 which sets forth the 1901 Act, and excepting the 1940 amendment of Section 16-204, appears in the appendix to the certified record and is not here repeated.

Its material provisions, considered by the District and appellate courts, being Section 16-204 as amended in 1946, and sections 16-205 and 16-207, being set forth on pages 2 and 3 of the Petition, are not here repeated.